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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 KEVIN JOSEPH SMITH,

12 Petitioner,

13 v.

14 SCOTT FRAKES,

15 Respondent.

CASE NO. 10-5921 RJB/JRC

ORDER ON REPORT AND  
RECOMMENDATION

16 This matter comes before the Court on the Report and Recommendation of U.S.  
17 Magistrate Judge J. Richard Creatura. Dkt. 25. The Court has considered the pleadings filed  
18 regarding the motion, the Report and Recommendation, the objections, and the remaining record.

19 On December 14, 2010, Petitioner filed this *habeas corpus* petition to challenge his  
20 conviction for unlawful possession of methamphetamine and bail jumping. Dkt. 5. On April 18,  
21 2011, Petitioner was ordered to submit an amended petition that clearly set forth his claims and  
22 grounds for relief on or before June 10, 2011. Dkt. 17. Petitioner did not file an amended  
23 petition. On July 6, 2011, the Report and Recommendation (Dkt. 25) was filed, recommending  
24 dismissal of the petition without prejudice for failing to prosecute the case.

1 On July 29, 2011, petitioner filed a Motion to Stay the case (Dkt. 27) and Objections to  
2 the Report and Recommendation (Dkt. 26). Petitioner stated that he had been undergoing  
3 treatment for a serious medical illness and the medication he was taking was making his vision  
4 blurry and sometimes he had vision loss. *Id.* Petitioner moved for a stay of this case because he  
5 alleged that as a result of his vision issues, he was temporarily unable to read and write. Dkt. 27,  
6 at 1-2.

7 Petitioner's motion for a stay was granted, in part, and denied, in part. He was given  
8 until September 30, 2011, to file his amended petition, if he wished. Dkt. 29. The Report and  
9 Recommendation (Dkt. 25) was renoted to October 14, 2011. *Id.*

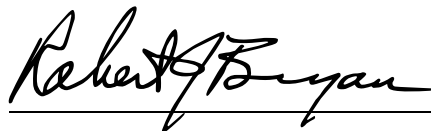
10 On September 20, 2011, Petitioner filed his amended petition. Dkt. 30. Accordingly, the  
11 Report and Recommendation (Dkt. 25) should not be adopted. Respondent has filed an answer.  
12 Dkt. 31. The case should be re-referred to the Magistrate Judge for further proceedings.

13 Accordingly it is **ORDERED** that,

- 14 • The Report and Recommendation (Dkt. 25) **IS NOT ADOPTED**;
- 15 • This case is **RE-REFERRED** to the Magistrate Judge for further proceedings.

16 The Clerk is directed to send uncertified copies of this Order to all counsel of record, to  
17 any party appearing *pro se* at said party's last known address, and the Hon. J. Richard Creatura.

18 Dated this 18th day of October, 2011.

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21 ROBERT J. BRYAN  
United States District Judge